



DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155



APR 15 2004

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementing Guidance for Employing Highly Qualified Experts within the
"Fourth Estate"

Reference is made to the Under Secretary of Defense (Personnel and Readiness) USD(P&R)) memorandum dated February 27, 2004, subject: Employment of Highly Qualified Experts, and Deputy Under Secretary of Defense (Civilian Personnel Policy) memorandum dated March 2, 2004, subject: Employment of Highly Qualified Experts - Fiscal Year 2004 Allocations (attached).

As noted in the guidance issued by the USD(P&R), Section 9903 of title 5, United States Code, as enacted by section 1101 of the National Defense Authorization Act, for Fiscal Year 2004, Public Law 108-136, 117 Stat. 1632-11633 (November 24, 2003), provided the Department of Defense the ability to attract **eminent experts from outside the civil service and uniformed services with state-of-the-art knowledge in fields of critical importance to the Department.** This legislation authorizes DoD to hire highly qualified experts in critical occupations for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate compensation.

When identifying individuals to serve as a Highly Qualified Expert (HQE), the following factors must be considered:

- The HQE should be an individual who possesses, uncommon, special, unique knowledges or skills in an occupational field beyond the usual



range of expertise, who is regarded as an authority or practitioner of unusual competence and skill.

- The HQE will NOT perform the work of a policy, decision-making, or managerial nature.
- The expert knowledge or skills required to perform the function should not be available within the Department and are needed to satisfy an emerging and relatively short-term, non-permanent requirement (up to five years with the possibility of a one year extension)
- The authority shall not be used to provide any one person temporary employment in anticipation of a permanent appointment or provide services that are readily available with the Department or another Federal agency.
- The authority shall not be used to bypass or undermine personnel ceilings or pay limitations.

Accordingly, in order to ensure consistency in use of this authority across the "Fourth Estate," and to obtain an allocation to support the employment of a HQE within your Component/Agency/Activity, the following information must be submitted to the Office of the Director, Washington Headquarters Services, Human Resources Directorate (Attn: Executive and Political Personnel Division), ~~1777 North Kent Street, Arlington, VA 22209~~ or hand carried to room 4C881, Pentagon.

2521 SOUTH CLARK STREET
ARLINGTON, VA 22202 *

- Overall position/employee statement addressing the following factors:
 - Labor market conditions
 - Type of position
 - Location of position
 - Work schedule
 - Level of independence in establishing work objectives
 - Working conditions
 - Organizational needs
 - Personal qualifications
 - Type of degree
 - Personal recommendations
 - Experience (recency, relevance, etc)
 - Budget considerations
 - Organizational equity/pay considerations; and,
 - Mission impact of work assignment
- Description of non-permanent functions of the position, with the expected duration of the project/functions. The description should be

* Address change to reflect
LHRD relocation to Crystal
City (Polk Bldg)

in the form of a position description to ensure duties of the position are commensurate with the proposed salary of the HQE.

- Resume of proposed HQE with a personal qualifications statement outlining the special/unique skills required to perform the job, and reasons why the particular expertise is not currently found within the Department.

Prior to adjusting the pay of a HQE, a request for continued use of allocation must be forwarded to the Director, Washington Headquarters Services for approval. This request should address the circumstances surrounding the pay increase such as employee's exceptional level of accomplishment related to projects, programs, or tasks that contributed to the Department or Component strategic mission, requirements, and goals; or because of a change in the employee's duties or responsibilities. If the latter is the case, a new position description should be submitted.

It should be noted, a vacant civilian manpower billet must be identified prior to the appointment of a HQE. Additionally, HQEs are subject to applicable Standards of Conduct provisions and conflict of interest laws and will be required to submit appropriate financial disclosure forms.

Questions regarding this guidance should be addressed to Linda Roper, Assistant Director for Executive and Political Personnel at (703) 614-7044, or Cheryl Sneed, of her staff at (703) 693-8345.



Raymond F. DuBois
Director

Attachment



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

Q 2 MAR 2004

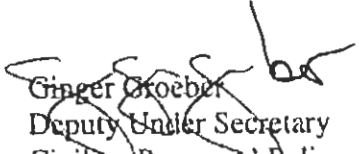


MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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Subject: Employment of Highly Qualified Experts – Fiscal Year 2004 Allocations

Based on FY 2003 end-strength, the Military Departments and the Fourth Estate are provided the following allocations for the employment of highly qualified experts during Fiscal Year 2004: Army – 695, Navy – 642, Air Force – 529, and the Fourth Estate – 384. The Military Departments and WHS, acting for the Fourth Estate, are responsible for assigning allocations to organizations under their purview, and ensuring that the allocations are not exceeded. As the need arises, underutilized authorizations may be re-allocated. You may request additional allocations by submitting written justification to my office.

Your use of these experts must be consistent with the USD(P&R) policy.


Ginger Groeber
Deputy Under Secretary
Civilian Personnel Policy





PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

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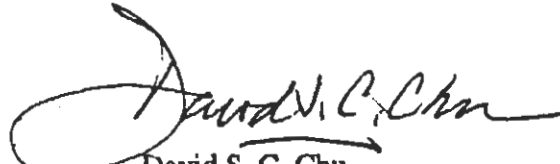
Subject: Employment of Highly Qualified Experts

Section 9903 of title 5, United States Code (U.S.C.), as enacted by section 1101 of the National Defense Authorization Act, for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1632-1633 (November 24, 2003), provides the Department of Defense with the ability to attract eminent experts with state-of-the-art knowledge in fields of critical importance to the Department. Specifically, this new legislation authorizes DoD to develop a program to hire highly qualified experts in critical occupations for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate compensation.

The Secretaries of the Military Departments, and heads of Defense Agencies and Field Activities with independent appointing authority for themselves and their serviced organizations are hereby redelegated the authority delegated to me by Deputy Secretary of Defense memorandum, dated February 11, 2004, to hire and compensate highly qualified experts consistent with the attached policy. The Secretaries of the Military Departments may further delegate this authority to Directors of those Defense Laboratories not excluded by statute from the National Security Personnel System.



The attached guidance implements DoD policy and procedures for appointing and compensating highly qualified experts as authorized under 5 U.S.C. 9903. The Deputy Under Secretary of Defense (Civilian Personnel Policy) will provide allocations for this fiscal year under separate cover.



David S. C. Chu

Attachment:
As stated

Department of Defense

Employment of Highly Qualified Experts Guidance and Procedures

A. General Information

1. Section 1101 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1632-1633 (November 24, 2003), amends title 5, United States Code (U.S.C.), by adding a new Chapter 99 entitled Department of Defense (DoD) National Security Personnel System (NSPS).
2. Section 9903 of title 5, U.S.C., gives the Secretary of Defense authority to establish a DoD program to attract highly qualified experts. This guidance implements that authority. This authority does not apply to the DoD laboratories excluded from NSPS under 5 U.S.C. 9902(c).
3. Designees. The Secretaries of the Military Departments and the Heads of Defense Agencies and DoD Field Activities with independent appointing authority on behalf of themselves and their serviced populations may appoint highly qualified experts from outside the civil service and uniformed services to positions with any work schedule (i.e., full-time, part-time, or intermittent) without regard to any other provisions of title 5, U.S.C. These authorities may not be further re-delegated, except that the Secretaries of the Military Departments may redelegate this authority to Directors of those Defense Laboratories not excluded by statute from NSPS.
4. This authority is in addition to the authority to appoint experts and consultants under 5 U.S.C. 3109 and section 1101 of the NDAA for FY 1999, as amended. Currently employed experts may continue to serve in their positions in accordance with the provisions of their appointment.
5. Employment under this authority may not exceed five years. Designees may, on a case-by-case basis, extend appointments for up to one additional year.
6. Section 9903(b)(2) of title 5, U.S.C., authorizes the Secretary of Defense to prescribe the rates of basic pay for positions to which employees are appointed at rates not in excess of the maximum rate of

basic pay authorized for senior-level positions under 5 U.S.C. 5376, as increased by locality-based comparability payments under 5 U.S.C. 5304. Additionally, the Secretary may pay such employees amounts in addition to basic pay within certain limitations (See Pay Administration Provisions, page 4).

7. Hiring of qualified experts shall be in accordance with the procedures prescribed in this guidance. Designees may also set the pay upon initial appointment of highly qualified experts, increase pay, and pay bonuses and incentives as prescribed in this policy.
8. The total number of highly qualified experts DoD-wide may not exceed 2,500 at any time. The Deputy Under Secretary of Defense (Civilian Personnel Policy (DUSD)(CPP)) will manage allocation reserves and approve cross leveling of allocations. At the beginning of each fiscal year, the DUSD(CPP) will apportion a share of the allocations based on civilian end strength, prior-year usage and the needs of the Military Departments and the Fourth Estate.
9. As the need arises, underutilized authorizations may be re-allocated and additional allocations may be requested with justification. As previously indicated, these actions will be authorized by the DUSD(CPP).
10. In the event the Secretary of Defense terminates this program, the following provisions will apply to an employee who, on the day before the program terminates, is serving in a position pursuant to an appointment under 5 U.S.C. 9903(b):

The termination of the program will not terminate the employee's employment in that position before the expiration of the lesser of:

- (1) The period for which the employee was appointed; or
- (2) The period to which the employee's service is limited under 5 U.S.C. 9903(c) and this policy, including any extension made before the termination of the program; and

The rate of basic pay prescribed for the position may not be reduced as long as the employee continues to serve in the position without a break in service.

B. Appointment Procedures

1. A highly qualified expert is an individual possessing uncommon, special knowledges or skills in a particular occupational field beyond the usual range of expertise, who is regarded by others as an authority or practitioner of unusual competence and skill. The expert knowledge or skills are generally not available within the Department and are needed to satisfy an emerging and relatively short-term, non-permanent requirement.
2. The appointment of highly qualified experts is limited to critical occupations, as determined by the Designee, necessary to promote the Department's national security mission.
3. The authority to employ experts shall not be used to provide any one person temporary employment in anticipation of a permanent appointment; to provide desired services that are readily available within the Department or another Federal agency; to perform continuing Department functions, including work of a policy, decision-making, or managerial nature; to bypass or undermine personnel ceilings or pay limitations; to aid in influencing or enacting legislation; to give former Federal employees preferential treatment; to do work performed by regular employees or to fill in during staff shortages.
4. An employee who separated under authority of the Voluntary Separation Incentive Pay (VSIP) Program is prohibited from reemployment with the Department for 12 months after separation, and may not be reemployed within five years unless the employee repays the separation incentive. Appointment under this authority constitutes reemployment with the Department and all prohibitions and repayment requirements apply. Reemployment restrictions are specified in Section 9902(i) of title 5, U.S.C., and implementing DoD VSIP guidance and procedures.
5. Individuals employed under this policy will be given Excepted Not To Exceed appointments (up to five years) using Nature of Action Code 171, Authority Code ZLM, and legal authority 5 U.S.C. 9903. The pay plan will be EE (Experts Other).
6. Components may submit requests for extension of appointment for up to one additional year to the DUSD(CPP) for approval on a case-by-case basis. Requests must include a justification of the need to retain the

services of the employee as well as the employee's expertise, and a discussion of the extension's role in promoting the Department's national security mission.

7. Appointees should be advised of appropriate ethics and reemployment restrictions that apply at the time of their appointment.

C. Pay Administration

1. Pay-Setting Upon Initial Appointment. When the Department hires an employee using the appointment authorities described in this policy, the Designee may set the employee's basic pay at any rate within the range between the rate for GS-15, step 10, up to the maximum limit established by 5 U.S.C. 9903(b)(2) (Level IV of the Executive Schedule), plus locality-based comparability pay, to a total not to exceed the rate of pay for Level III of the Executive Schedule. The employee's basic pay is determined according to factors that include but are not limited to:

- Labor market conditions;
- Type of position;
- Location of position;
- Work schedule;
- Level of independence in establishing work objectives;
- Working conditions;
- Organizational needs;
- Personal qualifications;
- Type of degree;
- Personal recommendations;
- Experience (recency, relevance);
- Budget considerations;
- Organizational equity/pay considerations; and,
- Mission impact of work assignments.

The employee's basic pay will not be further supplemented for any reason to include position-based special rates. In addition, the employee will not be eligible for any type of premium pay (e.g., overtime).

2. Pay Increases. Within the range set by 5 U.S.C. 9903, Designees may adjust an employee's basic pay because of the employee's exceptional level of accomplishment related to projects, programs, or tasks that contribute to the Department or Component strategic mission,

requirements, and goals; or because of a change in the employee's duties or responsibilities.

3. Additional Payments. Designees may authorize an additional payment only as a recruitment or relocation incentive, or to recognize specific accomplishments, contributions, or performance subject to the following limitations established under 5 U.S.C. 9903(d):

- (a) The total of all additional payments made under these provisions during any 12-month period may not exceed the lesser of: (1) \$50,000 in FY 2004 (which may be adjusted annually after FY 2004); or (2) the amount equal to 50 percent of the employee's annual rate of basic pay.
- (b) The employee's total compensation in any calendar year, including basic pay and any additional payments, may not exceed the total annual compensation payable at the salary set under 3 U.S.C. 104.

In addition, if a payment is authorized as a recruitment or relocation incentive, the recipient must sign a written service agreement documenting a minimum period of employment commensurate with the incentive prior to receiving the payment.

D. Documentation

1. Components will use the Defense Civilian Personnel Data System (DCPDS) to record the employment of highly qualified experts. Components must maintain written documentation of the criteria used for each appointment, as well as the factors and criteria used in setting initial pay, pay increases, and additional payments. Components will retain documentation for three years after employment is terminated.
2. The DUSD (CPP) will monitor the effective use of this appointment authority and may establish reporting requirements, as necessary. DCPDS will be used to obtain information on the employment of highly qualified experts to assist in meeting any reporting requirements.

E. Accountability

Designees are responsible for the appropriate and effective use and oversight of this authority to support mission requirements.

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1 viewable by the third party, what third party would conduct the
2 review, and the standard or standards for that review.

3 “(7) Nothing in this section, including the authority pro-
4 vided to waive, modify, or otherwise affect provisions of law not
5 listed in subsections (b) and (c) as nonwaivable, shall be con-
6 strued to expand the scope of bargaining under chapter 71 or
7 this subsection with respect to any provision of this title that
8 may be waived, modified, or otherwise affected under this sec-
9 tion.

10 “(8) The labor relations system developed or adjusted
11 under this subsection shall be binding on all bargaining units
12 within the Department of Defense, all employee representatives
13 of such units, and the Department of Defense and its sub-
14 components, and shall supersede all other collective bargaining
15 agreements for bargaining units in the Department of Defense,
16 including collective bargaining agreements negotiated with em-
17 ployee representatives at the level of recognition, except as oth-
18 erwise determined by the Secretary.

19 “(9) Unless it is extended or otherwise provided for in law,
20 the authority to establish, implement and adjust the labor rela-
21 tions system developed under this subsection shall expire six
22 years after the date of enactment of this subsection, at which
23 time the provisions of chapter 71 will apply.

24 **“§ 9903. Attracting highly qualified experts**

25 “(a) IN GENERAL.—The Secretary may carry out a pro-
26 gram using the authority provided in subsection (b) in order to
27 attract highly qualified experts in needed occupations, as deter-
28 mined by the Secretary.

29 “(b) AUTHORITY.—Under the program, the Secretary
30 may—

31 “(1) appoint personnel from outside the civil service
32 and uniformed services (as such terms are defined in sec-
33 tion 2101) to positions in the Department of Defense with-
34 out regard to any provision of this title governing the ap-
35 pointment of employees to positions in the Department of
36 Defense;



11-19

2 “(2) prescribe the rates of basic pay for positions to
3 which employees are appointed under paragraph (1) at
4 rates not in excess of the maximum rate of basic pay au-
5 thorized for senior-level positions under section 5376, as in-
6 creased by locality-based comparability payments under
7 section 5304, notwithstanding any provision of this title
8 governing the rates of pay or classification of employees in
9 the executive branch; and

10 “(3) pay any employee appointed under paragraph (1)
11 payments in addition to basic pay within the limits applica-
12 ble to the employee under subsection (d).

13 “(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Ex-
14 cept as provided in paragraph (2), the service of an employee
15 under an appointment made pursuant to this section may not
16 exceed 5 years.

17 “(2) The Secretary may, in the case of a particular em-
18 ployee, extend the period to which service is limited under para-
19 graph (1) by up to 1 additional year if the Secretary deter-
20 mines that such action is necessary to promote the Department
21 of Defense's national security missions.

22 “(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The
23 total amount of the additional payments paid to an employee
24 under this section for any 12-month period may not exceed the
25 lesser of the following amounts:

26 “(A) \$50,000 in fiscal year 2004, which may be ad-
27 justed annually thereafter by the Secretary, with a percent-
28 age increase equal to one-half of 1 percentage point less
29 than the percentage by which the Employment Cost Index,
30 published quarterly by the Bureau of Labor Statistics, for
31 the base quarter of the year before the preceding calendar
32 year exceeds the Employment Cost Index for the base quar-
33 ter of the second year before the preceding calendar year.

34 “(B) The amount equal to 50 percent of the employ-
35 ee's annual rate of basic pay.

36 For purposes of this paragraph, the term ‘base quarter’ has the
37 meaning given such term by section 5302(3).

1 “(2) An employee appointed under this section is not eligi-
2 ble for any bonus, monetary award, or other monetary incentive
3 for service except for payments authorized under this section.

4 “(3) Notwithstanding any other provision of this sub-
5 section or of section 5307, no additional payments may be paid
6 to an employee under this section in any calendar year if, or
7 to the extent that, the employee's total annual compensation
8 will exceed the maximum amount of total annual compensation
9 payable at the salary set in accordance with section 104 of title
10 3.

11 “(e) **LIMITATION ON NUMBER OF HIGHLY QUALIFIED EX-**
12 **PERTS.**—The number of highly qualified experts appointed and
13 retained by the Secretary under subsection (b)(1) shall not ex-
14 ceed 2,500 at any time.

15 “(f) **SAVINGS PROVISIONS.**—In the event that the Sec-
16 retary terminates this program, in the case of an employee
17 who, on the day before the termination of the program, is serv-
18 ing in a position pursuant to an appointment under this
19 section—

20 “(1) the termination of the program does not termi-
21 nate the employee's employment in that position before the
22 expiration of the lesser of—

23 “(A) the period for which the employee was ap-
24 pointed; or

25 “(B) the period to which the employee's service is
26 limited under subsection (c), including any extension
27 made under this section before the termination of the
28 program; and

29 “(2) the rate of basic pay prescribed for the position
30 under this section may not be reduced as long as the em-
31 ployee continues to serve in the position without a break in
32 service.

33 **“§ 9904. Special pay and benefits for certain em-**
34 **ployees outside the United States**

35 “The Secretary may provide to certain civilian employees
36 of the Department of Defense assigned to activities outside the
37 United States as determined by the Secretary to be in support